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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMZI MANSOUR,

Defendant and Appellant.

B293246

(Los Angeles County
Super. Ct. No. PA066428)

THE COURT:*

Defendant Ramzi Mansour appeals the trial court's denial of his request to strike a Penal Code section 12022.53¹ firearm enhancement, pursuant to the provisions of Senate Bill No. 620. (Stats. 2017, ch. 682, § 2.) The amendment to section 12022.53 following the passage of Senate Bill No. 620 applies retroactively to cases not yet final. Defendant's case was final in 2010. We

¹ All further statutory references are to the Penal Code unless otherwise indicated.

affirm.

BACKGROUND

In 2010, a jury convicted defendant of one count of second degree robbery (§ 211) and enhancements for personal use of a firearm (§ 12022.53, subd. (b)) and two prior prison terms (§ 667.5, subd. (b)).

On June 28, 2010, the trial court sentenced defendant to prison for 17 years. The sentence was comprised of the upper term of five years for the underlying crime, plus 10 years for the personal firearm use, plus two years, one for each of his two prior prison terms. We affirmed. (*People v. Mansour* (Nov. 15, 2011, B225591) [nonpub. opn.].)

On October 11, 2017, the Governor signed Senate Bill No. 620 into law, effective January 1, 2018. The bill amends subdivision (h) of section 12022.53. The amended subdivision provides: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (§ 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2.)

On August 16, 2018, defendant filed a motion for resentencing under section 1385 based on Senate Bill No. 620. The trial court denied the motion because defendant’s conviction was final and there was no separate independent ground for resentencing.

Defendant filed a timely notice of appeal and a request for a certificate of probable cause. In the request, defendant stated that the failure to apply retroactivity to his motion violated his federal and state due process and equal protection guarantees.

DISCUSSION

Defendant's court-appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues. At the invitation of the Court of Appeal, defendant filed a supplemental brief in which he addressed the circumstances surrounding the 2010 robbery charge but failed to address the issue raised by this appeal.

Senate Bill No. 620 (2017-2018 Reg. Sess.) took effect on January 1, 2018. As relevant here, the legislation amended Penal Code section 12022.53 and section 12022.5, restoring the discretion of trial courts to strike the gun use enhancements under these statutes. (Stats. 2017, ch. 682, §§ 1 & 2.) This newly granted sentencing discretion may be exercised as to any defendant *whose conviction is not final as of the effective date of the amendment*. (*In re Estrada* (1965) 63 Cal.2d 740, 742-748; see also *People v. Brown* (2012) 54 Cal.4th 314, 323 and *People v. Vieira* (2005) 35 Cal.4th 264, 305 [“a defendant generally is entitled to benefit from amendments that become effective while his case is on appeal”].) “A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari have expired.” (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1465.)

In this case, defendant's judgment had already become final well before January 1, 2018, thus the amendment to section 12022.53 does not apply to defendant, and the trial court correctly denied defendant's motion.

The judgment is accordingly affirmed.
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* ASHMANN-GERST, Acting P. J., CHAVEZ, J., HOFFSTADT, J.